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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

LINA E. LOPEZ et al., Plaintiffs and Appellants, v. WACHOVIA BANK INC., et al., Defendants and Respondents.	A133320 (San Mateo County Super. Ct. No. CIV496605)

Lina and Alberto Lopez appeal from trial court orders dismissing their first amended complaint for failure to state a claim and entering a judgment of dismissal.[1]

[1] Appellants pursued this case in the trial court, and initially in this court, in their own names and personal capacities. On April 9, 2012, appellants filed a notice substitution of party, purporting to substitute "Lina E. Lopez and Alberto Lopez, private Trusts, ex rel Executors Lina E. Lopez and Alberto Lopez in propria persons sui juris, in their capacity as lawful de jure State Citizens." Attached to the notice of substitution of party is a notarized document entitled "Acknowledgment of Trusts and Appointment of Executors" stating that appellants each "belatedly, but in the absence of full knowledge and/or any reasonable opportunity to have acquired such knowledge hereby acknowledge the existence of the private Trusts known as Lina E. Lopez and Alberto Lopez respectively and that we are the beneficiaries of such Trusts, and that Lina El Lopez is the Trustor of the private Trust known as Lina E. Lopez and Alberto Lopez is the Trustor of the private Trust known as Alberto Lopez. [¶] Accordingly, Lina E. Lopez hereby appoints herself as Executor of the private Trust known as Lina E. Lopez, and Alberto Lopez appoints himself as the Executor of the private Trust known as Alberto Lopez."

Appellants do not explain the nature of these private trusts, how they relate to the present action, or what consequence the substitution of parties would have on the case. Accordingly, we give the notice of substitution of party no effect.

Although their brief and the minimal appellate record they have provided make it difficult to discern, it appears their claims concern alleged fraud regarding the mortgage agreement for their home. They contend the magistrate lacked authority to dismiss their case without having ordered any discovery and violated their right to jury trial by doing so. We affirm.

STATEMENT OF THE CASE

As will be discussed, appellants, acting in propria persona, have failed to provide this court with a record containing even the most basic required elements, such as the orders from which their appeal is taken and the superior court's register of actions. (Cal. Rules of Court, rules 8.122(b)(1)(C) & (E), 8.124(b)(1)(A).)[2] The following is what we have been able to determine from the superior court's register of actions—for which we have had to consult the court's website[3] (see *Drummond v. Desmarais* (2009) 176 Cal.App.4th 439, 447, fn. 3)—and the few documents filed in this court.

Appellants filed their complaint on July 2, 2010, to which respondents responded with a demurrer filed on October 22, 2010.[4] The demurrer was sustained with leave to amend on February 3, 2011. The trial court's minute order stated that appellants had "not alleged sufficient facts with regard to any of the alleged causes of action" and "encouraged" appellants "to review the California Rules of Court and Code of Civil Procedure regarding sufficiency and format of pleadings."

Appellants filed their first amended complaint for breach of contract and fraudulent deceit on February 23, 2011. Appellants asserted in the complaint that respondents lacked standing as " 'holders in due course' and/or 'Real Parties in Interest' to the mortgage obligation which they are attempting to collect by foreclosing on Plaintiffs' property at 28 Lawrence Avenue, Antioch, California" due to their

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[2] All references to "rule(s)" is to the California Rules of Court.

[3] http://openaccess1.sanmateocourt.org/openaccess/CIVIL/civildetails.asp?courtcode=A&casenumber=496605&casetype=CIV&dsn=&movetodate=&startdate=&sort=&start=50

[4] Neither of these documents is part of the record.

"securitization" of the promissory note[5]; that respondents fraudulently misrepresented the nature of the debt they were attempting to collect, in that respondents held a "depreciated obligation" and had loaned appellants "NOTHING with any intrinsic value" but only "computerized credit entries in a bank ledger"; and that respondents violated duties of disclosure under Civil Code section 2937 and the Truth in Lending Act (15 U.S.C. § 1601 et seq.) regarding credit terms and transfer of debt servicing.

Respondents filed a demurrer to the first amended complaint on March 16, 2011, and on June 9, the demurrer was sustained without leave to amend. The court's minute order stated: "From what can be ascertained as alleged in the first amended complaint the purported claims asserted by plaintiffs are preempted by the Home Owners Loan Act ('HOLA') as set forth in 12 C.F.R. section 560.2(b)." The court's judgment was filed on August 1, 2011.

Appellants filed their notice of appeal on September 28, 2011. On October 18, appellants filed a notice designating the record on appeal indicating their intention to use a settled statement, accompanied by "Addenda" stating that they could not afford any of the alternatives for providing a record on appeal and were "opting" to "[p]rovide, upon

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[5] Appellants alleged that respondents "securitized the promissory note" pursuant to "the Gramm-Leach-Bliley Act of 1999 ('GLBA'), receiving at least full compensation for Plaintiff's promissory note in this manner, such amount(s) paying off the mortgage," but never notified appellants of this; that this "securitization converted [appellants'] promissory note from a negotiable instrument into a stock, or security" and this "was necessitated in order that the 'owner' of the stock, some or another unknown corporate identity (to be identified through the discovery process) could thus distribute dividends on the stock, one likely 'bundled' with other like stocks in order to avoid taxation on such stock"; that the transaction was not recorded with the county and the title to the real property had been "bifurcated, with the Deed of Trust showing one thing, but without a supporting promissory note to perfect the title"; that the trust on the real property created pursuant to the bank loan was destroyed by the securitization of the promissory note and bifurcation of title; that the transactions were based on "Financial Accounting Standard 140 (FAS 140) promulgated by the Financial Accounting Standards Bureau (FASB), a private, nongovernmental corporate concern; that appellants were unable to understand the language of FAS 140; that use and " 'official approval' " of "such 'accounting standards' is per se unlawful" for a variety of enumerated reasons.

request, copies of all of their various pleadings in the instant case, with Respondents having the opportunity to do likewise." Appellants filed their civil case information statement the next day, with this Court, without attaching the required copy of the order from which they were appealing. They were informed by the superior court that the "Addenda" would not suffice for the appellate record and directed to file a motion to use a settled statement; their subsequent motion to use a settled statement was denied,[6] and they filed a new designation of record electing to proceed with an appendix.

On February 27, 2012, appellants filed their opening brief and appellants' appendix. The appendix contains two documents: an unendorsed copy of the first amended complaint and a document entitled "Notice of Protest," protesting respondents' refusal to honor appellants' counteroffer to respondents' demand for payment of the mortgage obligation. Appellants also filed a "Supplementary Brief on Admission of New States," which appears to challenge the legal existence of the State of California and, therefore, the jurisdiction of its courts. This brief was filed in violation of rule 8.200(a), which states that aside from appellant's opening brief, respondent's brief and appellant's reply brief, "[n]o other brief may be filed except with the permission of the presiding justice, unless it qualifies under (b) [supplemental briefs after remand or transfer from Supreme Court] or (c)(6) [answer to amicus curiae briefs filed with permission of presiding justice]."

Respondents filed their response brief on May 1, 2012. Appellants moved to strike the brief as untimely and "totally unresponsive to any of the issues raised on

[6] The trial court's minute order stated that appellants failed to timely file the motion with their notice designating the record on appeal and had not established, as required by rule 8.137, that a substantial cost saving would result from use of a settled statement, that the statement could be settled without significantly burdening opposing parties or the court, that the designated oral proceedings were not reported or could not be transcribed or that appellants were unable to pay for a reporters transcript and funds were not available from the transcript reimbursement fund.

appeal." The motion, also labeled "Lopez v. Wachovia: Reply Brief for Appellants," was received but not filed because it did not include a proof of service.[7]

DISCUSSION

Appellants are pursuing this action in propria persona, and their opening brief expresses their frustration with the hurdles they are required to overcome in doing so. The challenges of appellants' position, however, do not permit us to ignore rules of procedure. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) A party who acts as his or her own attorney " 'is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]' " (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247, quoting *Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) " '[T]he in propria persona litigant is held to the same restrictive rules of procedure as an attorney [citation].' " (*County of Orange v. Smith,* at p. 1444, quoting *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639.)

" ' "A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error." [Citation.]' (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; accord, *Walling v. Kimball* (1941) 17 Cal. 2d 364, 373; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 349, p. 394.) 'A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.' (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051,

[7] After unsuccessful attempts to reach appellants by telephone, this court's deputy clerk informed them by letter dated June 26 that the motion had not been filed because of the absence of a proof of service, and that it was not clear whether the document was a motion to strike respondents' brief, appellants' reply brief, or both. The letter asked appellants to advise the court within 10 days whether the document was a motion, a brief or both and directing them to file the requisite proof of service. Appellants did not respond.

fn. 9; accord, *Estrada v. Ramirez* (1999) 71 Cal.App.4th 618, 620, fn. 1.)" (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) "Failure to provide an adequate record on an issue requires that the issue be resolved against plaintiff." (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

As earlier stated, the record appellants have provided to this court lacks even the basic elements required for the record on appeal. An appellant's appendix is required to contain "[a]ll items required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2)." (Rule 8.124(b)(1)(A).) As relevant here, rule 8.122(b)(1) provides that the clerk's transcript contain the notice of appeal, any judgment and/or order appealed from and any notice of its entry, and the register of actions; rule 8.122(b)(2) requires that each document "show the date necessary to determine the timeliness of the appeal." The appendix is also required to contain "[a]ny item listed in rule 8.122(b)(3) that is necessary for proper consideration of the issues, including, for an appellant's appendix, any item that the appellant should reasonably assume the respondent will rely on." (Rule 8.124(b)(1)(B).)

Appellants' appendix contains *none* of the items required by rule 8.122(b)(1), and the only documents it does contain, the first amended complaint and the notice of protest, are not file-stamped. We are aware of the trial court order appellants are appealing only from our independent consultation of the register of actions on the trial court's website, and we have not been provided with respondents' demurrer and supporting arguments, or appellants' opposition to the demurrer. The record thus provides virtually no basis for review of the trial court's decision.

Appellants' opening brief also fails to comply with the rules of court. The brief contains neither a table of contents (rule 8.204(a)(1)(A)) nor separate headings for the points stated (rule 8.204(a)(1)(B)). The brief contains no "summary of the significant facts." (Rule 8.204(a)(2)(C).) Appellants assert that they were fraudulently induced to enter a mortgage agreement that was defective on "several grounds" without ever specifying those grounds or describing the circumstances that led them to file suit. Their

brief contains only two citations to the record, which merely point to the existence of the first amended complaint and notice of protest—documents which, as we have said, are included in appellants' appendix without file stamps. The few references in the brief to underlying facts are unsupported by any reference to the record.

"A violation of the rules of court may result in the striking of the offending document, the waiver of the arguments made therein, the imposition of fines and/or the dismissal of the appeal. (*Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal. App.3d 1203, 1205; *Schulz v. Wulfing* (1967) 251 Cal.App.2d 776, 778-780; *Graybeal v. Press-Telegram Pub. Co*. (1936) 14 Cal.App.2d 252, 253-254.) In addition, it is counsel's duty to point out portions of the record that support the position taken on appeal. The appellate court is not required to search the record on its own seeking error. Again, any point raised that lacks citation may, in this court's discretion, be deemed waived. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.)" (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.)

In their statement of the case, appellants assert that the magistrate ignored their notarized good faith attempt to discharge their mortgage obligation, citing the notice of protest included in their appendix, which bears neither a file stamp nor a notary's seal. They claim—without further argument or explanation of the factual circumstances—that this document should have entitled them to "at least the discharge of the obligation and subsequent transfer of title of the property." Appellants assert that the magistrate "blatantly ignored these public, notarized records . . . with a demeaning and condescending order 'permitting' the filing of an amended complaint, with a strong admonition to engage an attorney, the better to make the process 'look good' on the record for purposes of appeal . . . ," but they provide no reporter's transcript or other documentation to support their characterization of the court's order and remarks.[8] They

[8] The trial court's minute order—as reflected on the docket found on the court's website, since the order is not included in the record on appeal—simply states that the demurrer was "sustained with leave to amend as to all causes of action. Plaintiffs have not alleged sufficient facts with regard to any of the alleged causes of action. Plaintiffs

complain of being unable to figure out what authority the magistrate relied upon to dismiss the case without ordering discovery, but fail to include in the record the order or any reporter's transcript of the proceedings leading to it.

Appellants argue that the magistrate erred in dismissing the complaint when respondents appeared in court only through counsel, "who had no personal knowledge" of the facts and whose pleadings should have been "dismissed as hearsay"; and in denying appellants a jury trial by failing to allow discovery, which "would almost certainly have disclosed the unlawfulness of Respondent(s) acts and given rise, if need be, to factual issues cognizable to a jury." Appellants argue that they were entitled to summary judgment in their favor for "at least want of consideration to support a common law contract and/or lack of standing of Respondent(s) to appear in a common law court," and that "had Appellants been defendants in the trial 'court', the available authorities squarely support the proposition that the trial 'court' would NOT have had subject matter jurisdiction[.]" Appellants do not explicate the basis of their claim that respondents lack standing, but from the cases they rely upon—without proper citation—it appears the claim is based on respondents' alleged lack of legal title to the real property. (*U.S. Bank National Association v. Ibanez* (Mass. 2011) 941 N.E.2d 40 [banks' requests for declaration of clear title properly denied where securitization documents did not establish banks were holders of the mortgages before foreclosure sale at which they purchased properties]; *Bevilacqua v. Rodriguez* (Mass. 2011) 955 N.E.2d 884 [plaintiff did not hold record title, and therefore lacked standing in title action, because bank from which he purchased property was not assignee of mortgage at time of foreclosure sale where it purportedly acquired title]; *Sturdivant v. BAC Home Loans Servicing, LP* (Ala.Civ.App. 2011) 2011 Ala.Civ.App. LEXIS 361 [BAC lacked standing to bring ejectment action against mortgagor because original mortgagee had not yet assigned mortgage to BAC

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are encouraged to review the California Rules of Court and Code of Civil Procedure regarding sufficiency and format of pleadings."

when BAC initiated foreclosure proceedings].) Appellants do not explain how the cases they rely upon relate to the present case.

Beyond these unelaborated arguments, appellants appear to challenge the constitutionality of rules that permit a trial court to dismiss their complaint with prejudice without affording them a jury trial. Appellants cite no authority for the proposition that they have a constitutional right to discovery and a jury trial regardless of the content of their complaint. Disposition of a civil case without a jury trial, under summary judgment procedures, has been upheld against constitutional challenges. In that context, *Scheiding v. Dinwiddie Construction Co.* (1999) 69 Cal.App.4th 64, 70, observed: "Older decisions frequently referred to summary judgment as a 'drastic remedy' and emphasized the right to jury trial on constitutional grounds, noting that both the federal and state Constitutions establish trial by jury as a basic right. (U.S. Const., 7th Amend.; Cal. Const. art. I, § 7.) Nevertheless, California and federal courts long ago agreed that nothing in the summary judgment procedure is inherently unconstitutional. (*Bank of America, etc., v. Oil Well S. Co*. (1936) 12 Cal.App.2d 265, 270; *Fidelity & Deposit Co. v. United States* (1902) 187 U.S. 315.)" We are aware of no reason to view the matter differently in the context of a successful demurrer.

" 'A demurrer tests the legal sufficiency of factual allegations in a complaint.' (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 42.) A general demurrer challenges the legal sufficiency of the complaint on the ground it fails to state facts sufficient to constitute a cause of action. (See Code Civ. Proc., § 430.10, subd. (e).)

"Whether a complaint states facts sufficient to constitute a cause of action is a question of law. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) We therefore review de novo the sustaining of a general demurrer. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

"When a general demurrer is sustained without leave to amend, 'we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no

abuse of discretion and we affirm.' (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)" (*Behnke v. State Farm General Ins. Co*. (2011) 196 Cal.App.4th 1443, 1452.)

Appellants offer no basis for us to conclude the trial court abused its discretion here. Indeed, appellants never refer to the actual ruling on the demurrer or reasons. In the absence of any description of the facts underlying this controversy, a record permitting us to review the trial court's actions, or argument addressing the relevant questions, we have no choice but to affirm the trial court's decision.[9]

The judgment is affirmed.

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Kline, P.J.

We concur:

_____
Lambden, J.

_____
Richman, J.

[9] We have not considered appellants' Supplementary Brief on Admission of New States. As earlier stated, this brief was filed without permission of the court, in violation of rule 8.200(a)(4). The brief appears to question the legal existence of the State of California and, therefore, the powers of the state's judiciary.